

# SENATE BILL No. 181

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-18-2-99.4; IC 16-36-1.

**Synopsis:** Order of priority for health care decisions. Specifies the order of priority in which persons are authorized to consent to health care for an individual who is incapable of consenting to health care and who has not appointed a health care representative.

**Effective:** July 1, 2008.

**Errington**

January 8, 2008, read first time and referred to Committee on Judiciary.

C  
o  
p  
y



Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## SENATE BILL No. 181

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-18-2-99.4 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2008]: **Sec. 99.4. "Domestic partner", for**  
4 **purposes of IC 16-36-1, means an individual who is participating**  
5 **in a relationship between two (2) unrelated adults who:**

6           **(1) reside together;**

7           **(2) have chosen to share each other's lives in an intimate and**  
8 **committed relationship of mutual caring; and**

9           **(3) do not have a similar relationship with anyone else.**

10       SECTION 2. IC 16-36-1-5 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. **(a) This section**  
12 **does not apply to an individual who has appointed a health care**  
13 **representative under section 7 of this chapter unless the health care**  
14 **representative is not reasonably available or declines to act.**

15       **(a) (b)** If an individual incapable of consenting under section 4 of  
16 this chapter has not appointed a health care representative under  
17 section 7 of this chapter or the health care representative appointed

2008

IN 181—LS 6676/DI 104+



C  
o  
p  
y

under section 7 of this chapter is not reasonably available or declines to act, consent to health care may be given **by a person who is:**

- (1) ~~by~~ a judicially appointed guardian of the person or a representative appointed under section 8 of this chapter; or
- (2) ~~by a spouse, a parent, an adult child, or an adult sibling, a~~ **person described in subsection (c):**

(A) unless **the person is** disqualified under section 9 of this chapter; **or**

(B) if:

~~(A)~~ (i) there is no guardian or other representative described in subdivision (1);

~~(B)~~ (ii) the guardian or other representative is not reasonably available or declines to act; or

~~(C)~~ (iii) the existence of the guardian or other representative is unknown to the health care provider; or

(3) ~~by~~ the individual's religious superior, if the individual is a member of a religious order and:

(A) there is no guardian or other representative described in subdivision (1);

(B) the guardian or other representative is not reasonably available or declines to act; or

(C) the existence of the guardian or other representative is unknown to the health care provider.

**(c) Except as provided in subsection (e), consent to health care under subsection (b)(2) shall be made by a person in the following order of priority:**

(1) A spouse of the individual unless the spouse and the individual are legally separated.

(2) A domestic partner.

(3) A parent or adult child of the individual.

(4) An adult sibling.

(5) A grandparent or an adult grandchild of the individual.

(6) Any other relative by blood or marriage who reasonably is believed by the health care provider to have a close personal relationship with the individual.

**(d) If a person consenting to health care under this section has equal priority under subsection (c) with another person and the persons disagree on the health care to be provided to the individual:**

(1) the person;

(2) the health care provider; or

(3) any other person with interest in the welfare of the

C  
o  
p  
y



individual;  
may petition the probate court for an order determining the appropriate care to be given to the individual or request the court to appoint a temporary or permanent guardian for the individual.

(e) A health care provider responsible for the care of the individual may not give priority to a person under this section and may give priority to a person in the next order of priority if the health care provider:

(1) has actual knowledge that the individual, before the individual was unable to consent to health care, did not want the person to make decisions concerning the individual's care; or

(2) determines that the person with priority:

(A) is not reasonably available;

(B) is not willing to make health care decisions on behalf of the individual; or

(C) is incapacitated or unable to appreciate the nature and implications of the individual's health care condition and proposed health care in order to make a reasoned decision concerning the proposed health care.

~~(b)~~ (f) Consent to health care for a minor not authorized to consent under section 3 of this chapter may be given by any of the following:

(1) A judicially appointed guardian of the person or a representative appointed under section 8 of this chapter.

(2) A parent or an individual in loco parentis if:

(A) there is no guardian or other representative described in subdivision (1);

(B) the guardian or other representative is not reasonably available or declines to act; or

(C) the existence of the guardian or other representative is unknown to the health care provider.

(3) An adult sibling of the minor if:

(A) there is no guardian or other representative described in subdivision (1);

(B) a parent or an individual in loco parentis is not reasonably available or declines to act; or

(C) the existence of the parent or individual in loco parentis is unknown to the health care provider.

~~(c)~~ (g) An individual delegated authority to consent under section 6 of this chapter has the same authority and responsibility as the individual delegating the authority.

~~(d)~~ (h) ~~An individual~~ A person authorized to consent for another an

C  
o  
p  
y



**individual** under this section shall act in good faith and in the best interest of the individual incapable of consenting.

SECTION 3. IC 16-36-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6. (a) An individual authorized to consent to health care for another under section ~~5(a)(2)~~, 5(b)(2), **5(f)(2)**, or ~~5(b)(3)~~ **5(f)(3)** of this chapter who for a time will not be reasonably available to exercise the authority may delegate the authority to consent during that time to another individual not disqualified under section 9 of this chapter. The delegation:

(1) must be in writing;

(2) must be signed by the delegate;

(3) must be witnessed by an adult; and

(4) may specify conditions on the authority delegated.

(b) Unless the writing expressly provides otherwise, the delegate may not delegate the authority to another individual.

(c) The delegate may revoke the delegation at any time by notifying orally or in writing the delegate or the health care provider.

C  
o  
p  
y

